



Department of Energy
Western Area Power Administration
Rocky Mountain Customer Service Region
P.O. Box 3700
Loveland, CO 80539-3003

OCT 29 2010

Memorandum of Understanding
No.10-RMR-2150
Renewable Energy Credits for
LAP Hydro Generation
TOWN OF FREDERICK

Mr. Eric E. Doering
Mayor
Town of Frederick
401 Locust Street
Frederick, CO 80530

Dear Mr. Doering:

The Town of Frederick (Frederick) is a customer of the Western Area Power Administration's (Western) Rocky Mountain Region (RMR) that has expressed interest in acquiring Renewable Energy Credits (RECs) associated with the Loveland Area Projects (LAP) hydropower generation. This Memorandum of Understanding (MOU) provides the terms and conditions under which RMR will issue LAP-generated hydropower RECs through its LAP REC Program (Program).

The principles by which RMR will administer the Program, "Loveland Area Projects (LAP) Renewable Energy Credit (REC) Program Principles," are attached to this MOU. The Program Principles may be updated periodically at Western's sole discretion and will be posted on RMR's Power Marketing and Contracts Web site (www.wapa.gov/rm/PMcontractRM/default.htm).

RMR will work with its customers to maximize the benefit of RECs produced by Federal hydropower in LAP's marketing area, but does not guarantee the suitability of the RECs for any particular purpose.

The parties to this MOU understand and agree that the Program will be administered as follows:

1. Western will:

- 1.1. Provide Frederick an opportunity to request RECs from firm electric energy generated by LAP hydropower facilities and received by Frederick during a

calendar year. Frederick's annual participation in the Program will continue until Western receives written notification from Frederick that they no longer desire to receive RECs under the Program.

- 1.2. Create a subaccount for Frederick under Western's primary account in the Western Renewable Energy Generation Information System (WREGIS), unless Frederick informs RMR of its already established WREGIS account.
 - 1.3. Allocate RECs based upon Frederick's portion of the total firm energy generated from LAP hydropower facilities during each calendar year, in the ratio of one (1) REC to one (1) megawatt hour (MWh) generated. RECs will be allocated from more limited Western resources such as Colorado small hydroelectric generators and Wyoming small hydroelectric generators based on Frederick's preference listed in Exhibit A to this MOU. Purchase power, including purchase power from renewable sources, is not part of the Program. If the sum of allocated energy for all Program participants is higher than the LAP hydropower generation in a calendar year, RECs generated under the Program will be allocated to each Program participant based on the participant's pro-rated share of annual LAP energy provided under its firm electric service (FES) contract with Western.
 - 1.4. As soon as practical, in each calendar year, transfer allocated RECs generated in the previous year calendar year to a WREGIS subaccount in the name of Frederick or to Frederick's WREGIS account.
 - 1.5. Administer the Program, which may include auditing a customer's REC usage.
2. Frederick will:
- 2.1. Establish an agreement with WREGIS to enable login rights to the subaccount created by Western, or inform Western in writing of an already existing account with WREGIS.
 - 2.2. Determine and interpret any Renewable Portfolio Standard (RPS) or other requirements, and determine the manner in which RECs may be applicable to the requirements.
 - 2.3. Be entitled to transfer RECs only to its constituent members in the LAP marketing area. Frederick may not sell Program RECs under any circumstances, and must ensure that any RECs that are transferred to members are not sold.
 - 2.4. As necessary, open and utilize its own WREGIS account to permanently retire RECs in accordance with compliance obligations or for any other reason. Frederick shall be responsible for paying any associated retirement fees.

- 2.5. Submit a written request to Western by October 1 if it desires to discontinue its participation in the LAP REC Program or modify its preference for RECs from limited Western resources. If Frederick opts out of the Program, it must enter into a new MOU to participate in the Program again. Western shall have the sole discretion to determine whether the timing of Frederick's re-entry into the Program allows it to receive RECs for the year requested.
3. Term: This MOU shall remain in effect through the term of FES Contract No. 87-LAO-113, which is September 30, 2024; Provided, that either Western or Frederick may terminate this MOU for any reason upon ninety (90) days notice to the other party.
4. Compensation: Western shall provide the RECs at no cost to Frederick as an added value to the firm electric service Western provides under Contract No. 87-LAO-113.
5. Choice of Law and Forum: Federal law shall control the obligations and procedures established by this MOU and the performance and enforcement thereof. The forum for litigation arising from this MOU shall exclusively be a Federal court of the United States, unless the parties agree to pursue alternative dispute resolution.
6. Waivers: Any waivers at any time by either party of its rights with respect to a default or any other matter arising under or in connection with this MOU shall not be deemed a waiver with respect to any subsequent default or matter.
7. Notices: Any notice, demand, or request specifically required by this MOU or its provisions to be in writing shall be considered properly given when delivered in person or sent by prepaid registered or certified mail, commercial delivery service, facsimile, electronic, prepaid telegram, or by other means with prior agreement of the parties, to each party's authorized representative at the principal offices of the party as designated below:

Western Area Power Administration

David Neumayer
Power Marketing Manager
5555 East Crossroads Boulevard
Loveland, CO 80538
(970) 461-7322

Town of Frederick

Richard Leffler
Town Engineer
401 Locust Street
Frederick, CO 80530
(720) 382-5601

The designation of the person to be notified may be changed at any time by similar notice. Where facsimile or electronic means are utilized for any communication covered by this provision, the sending party shall keep a contemporaneous record of such communications and shall verify receipt by the other party.

8. Contingent Upon Appropriations and Authorization:

8.1. Where activities provided for in this MOU extend beyond the current fiscal year, continued expenditures by the United States are contingent upon Congress making the necessary appropriations required for the continued performance of the United States' obligations under this MOU. In case such appropriation is not made, Frederick hereby releases the United States from its obligations under this MOU and from all liability due to the failure of Congress to make such appropriation.

8.2. In order to receive and expend funds necessary for the continued performance of the obligations of the United States under the MOU, additional authorization may be required. In case such authorization is not received, Frederick hereby releases the United States from its obligations under this MOU and from all liability due to the lack of such authorization.

9. Covenant Against Contingent Fees: Frederick warrants that no person or selling agency has been employed or retained to solicit or secure this MOU upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Frederick for the purpose of securing business. For breach or violation of this warranty, Western shall have the right to annul this MOU without liability.

10. Contract Work Hours and Safety Standards: This MOU, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. §3701, as amended or supplemented, is subject to the provisions of the Act, 40 U.S.C. §§ 3701-3708, as amended or supplemented, and to regulations promulgated by the Secretary of Labor pursuant to the Act.

11. Equal Opportunity Employment Practices: Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by Executive Order No. 12086, 43 Fed. Reg. 46501 (1978), as amended or supplemented, which provides, among other things, that Frederick will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated herein by reference the same as if the specific language had been written into the MOU, except that Indian Tribes and tribal organizations may apply Indian preference to the extent permitted by Federal Law.

12. Use of Convict Labor: Frederick agrees not to employ any person undergoing sentence of imprisonment in performing the MOU except as provided by 18 U.S.C.

§3622 (c), as amended or supplemented, and Executive Order No. 11755, 39 Fed. Reg. 779 (1973), as amended or supplemented.

If the above terms are satisfactory, please sign, date, and attest both originals of this MOU and date both originals of Exhibit A. Please return one signed original of this MOU and Exhibit A to the attention of Bob Langenberger at the letterhead address and keep one original for your records.

Sincerely,



David Neumayer
Power Marketing Manager

Enclosures

IN DUPLICATE

Accepted this ____ day of _____ 2010.

TOWN OF FREDERICK

Witness:

By: _____

By: _____

Eric E. Doering

Title: _____

Title: Mayor

Address: 401 Locust Street
Frederick, CO 80530

PREFERENCES FOR RENEWABLE ENERGY CREDITS
FROM LIMITED WESTERN RESOURCES

1. This Exhibit A, made this _____ day of _____ 2010, and as a part of Memorandum of Understanding No. 10-RMR-2150, dated _____, 2010, hereinafter called the MOU, shall become effective on the date first written above and shall remain in effect until superseded by another Exhibit A; Provided, That this Exhibit A or any superseding Exhibit A shall terminate upon expiration of the MOU.
2. The preference indicated below will not impact the total amount of RECs received, but it may impact the source of the RECs transferred from Western Area Power Administration's WREGIS account to Frederick's WREGIS account or subaccount.
 - 2.1. In addition to RECs from large hydroelectric generation (>30 MW), Frederick prefers to receive a pro-rated share of RECs from the following limited Western resources:
 - 2.1.1. X Colorado Small Hydroelectric Generation (<30 MW)
 - 2.1.2. X Wyoming Small Hydroelectric Generation (<30 MW)